Memorandum

To: Alan Klimek

From Art Barnhardt

Jay H. Sauber

Subject: Hearing Officer's Report

Draft NPDES General Permits for Stormwater Discharge

At your request, we functioned as the Division of Water Quality's hearing officers for the Draft NPDES General Permits for Stormwater from Small Municipal Seperate Storm Sewer Systems (MS4) discharging to the waters of North Carolina. Members of the Stormwater Permitting Unit provided staff support and prepared the hearing record and we wish to express our appreciation for their talented support.

This has been a controversial hearing process as a number of presentations and written comments had significant issues with the permits as drafted. The attached report summarizes the hearing process, comments, issues, and areas the hearing officers identify as needing your considerations and further review. There were significant legal issues and a number of laws, rules, and regulations involved with this hearing process. Throughout the entire hearing process, we developed a prominent and overriding observation: Many of North Carolina's rules and regulations associated with NPDES permits did not foresee the regulation of untreated stormwater discharges to the surface waters of the state as an NPDES regulated activity. As a result there are many legal issues associated with the general stormwater permitting process. We offer this report for your consideration.

Hearing Officers Report

TWO Draft NPDES General Permits for Point Source Discharges

Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) discharging to the waters of North Carolina

<u>General Permit No. NCG230000</u> <u>To Discharge Stormwater in the Eighty Non-coastal Counties</u>

<u>General Permit No. NCG240000</u> <u>To Discharge Stormwater in the Twenty Coastal Counties</u>

Hearing Officers:

Art Barnhardt Jay Sauber

Hearing Overview

On November 1, 2004, Public Notice was given to provide the opportunity for those wishing to review and comment on two Phase II Stormwater General Permits through a public hearing process. One General Permit was for the 20 coastal counties and the other was for the remaining 80 interior counties of the state. This notice was published in The North Carolina Register, and in eleven daily newspapers across the state. Notices were also electronically mailed on November 3, 2004 to government officials and other persons thought to be interested in the public hearings. The Public Notice of this meeting was also posted on the DWQ Stormwater Permitting Unit website. A copy of this notice is attached.

The Public Notice included the date, time and location of four Public Hearings:

December 2, 2004 7:00 pm, Catawba Valley Community College, Hickory December 9, 2004 6:00 pm, Wayne County Public Library, Goldsboro December 14, 2004 7:00 pm, N.E. Branch New Hanover County Public Library, Wilmington December 16, 2004 6:30 pm, May Memorial Library, Burlington

Anyone wishing to present oral comments could have done so at one of the above locations. Written comments could also have been submitted at the Public Hearings or submitted directly to DWQ staff anytime between November 1, 2004 and December 31, 2004 at which time the comment period closed.

Jay Sauber and Art Barnhardt, both supervisors for the Division of Water Quality, served as hearing officers for this General Permit hearing. At each meeting one of the two hearing officers opened the hearing with prepared comments. Then the floor was opened for the public to present or submit comments for the record.

At the Hickory Hearing 2 people signed in and none registered to speak. The hearing officers decided to allow staff to informally interact with the attendees as only two adult citizens were present, and neither was prepared to comment on the subject of the hearing. One attendee represented a local municipality and the other was an engineer involved in assisting municipalities in applying for stormwater permits and development of stormwater management plans. Staff informally discussed General Permit issues with the attendees for approximately 30 minutes.

At the Goldsboro hearing 6 people were present, 3 people signed in and 1 registered to speak at the hearing. The registered attendees were representatives from local municipalities. The one speaker was seeking clarification on several points within the permit.

At the Wilmington Hearing 57 people were present, 37 people signed in and 23 registered to speak. All speakers expressed negative comments and opposition to the draft General Permits.

At the Burlington Hearing 20 people were present, 12 signed in and 5 registered to speak. Most of the speakers at this hearing had negative comments about the draft General Permits and voiced concerns to enhance protection of water quality in the state.

In addition to the oral comments received at the Public Hearing, 21 written comments with accompanying supplemental information were received in the form of standard mail or hand delivered, and 662 electronic mail submittals were received from various groups and/or individuals.

Comments Summary and Issue Identification

(A summary compendium condensing key comments and issues presented in letters, electronic mail, reports, and at public hearings held on December 2, 9, 14, and 16, 2004.

Compendium list of comments from concerned citizens, environmental groups, county soil conservation representatives, and others

- 1. The General Permits are not effective or stringent enough to protect water quality and therefore should not be issued. We can expect NC waters to continue to degrade under the draft General Permits. Individual permits should be used. Comments were particularly concerned for protection of sensitive waters such as ORW, HQW, SA and SB waters.
- 2. Stormwater pollution is NC's most serious problem. Individuals concerned about a healthy, harvestible, shellfish resource cannot support the issuance of the draft General Permits as they are ineffective and will actually permit further degradation of this designated use.
- 3. Existing stormwater rules are ineffective so how can they be "deemed to comply". More shellfish areas continue to be closed. Developers and NCDOT are polluting in spite of existing rules and permits. More stringent controls are needed including effective vegetative buffers.
- 4. The 24% built-upon area criterion has failed to protect the state's waters. Numerous comments, scientific studies and reports make a compelling case for mandating engineering controls at 10%-12% built upon. The 24% built-upon area contradicts the Coastal Habitat Protection Plan value of 12% and will damage receiving waters for biological integrity and attainment of water quality standards. If we are truly interested in managing stormwater pollution, ensuring clean water and harvestable shellfish, then engineered stormwater control devices should be mandatory for all development with impervious surfaces in excess of 10%.
- 5. The general permits should require stormwater discharge analytical monitoring, and specifically list the types of municipal facilities covered in the general permit.
- 6. The coastal permit is not protective of water quality, and the local government has been irresponsible in controlling stormwater.
- 7. DWQ should use only individual permits until the legislature can enact more protective laws.
- 8. The general permit should add nutrient removal as a requirement for wet ponds. Expanded pet waste constraints and the use of buffers should be more rigorous.

- 9. The General permit with 24% built upon will be a clear impediment to restoring impaired use to shell fishing SA waters and will continue to result in increased closures.
- 10. General Permits should not be used for impaired or sensitive waters. General permits should not be used for discharges to ORW, HQW, Tr, NSW, SA, and WS waters.
- 11. The General Permits erroneously deem other current stormwater programs as meeting Phase II requirements, when in fact they do not.
- 12. The General Permits do not allow public comment because applications are not publicly available.
- 13. Individual permits should be used to encourage construction methods and building technologies that move toward stormwater management that does not harm water quality. Innovative strategies that make use of the retention, infiltration, and reuse of stormwater should be considered.
- 14. Individual permits would allow for a program that would recognize and credit innovative development designs and stormwater controls, require more stringent measures on a case by case basis where needed, and create a program that will effectively ensure clean water, healthy and harvestable shellfish, and safe swimming waters following rain events.
- 15. A number of comments recognized limitations imposed on the DWQ by N.C. Legislative Session Law 2004-163. Several indicated a need for more water quality protective legislation.

Compendium list of comments from Local Governments, League of Municipalities, Builders' Associations, groups concerned about the economic impacts of the general permits, and others.

- 1. Various local governments suggested that the general permits eliminate language related to compliance with water quality standards. The general permits, like the Clean Water Act, should focus compliance on the required minimum elements at the maximum extent practicable (MEP). Comments expressed a desire to avoid permit violations and potential litigations every time it rains.
- 2. DWQ should develop a strategy for circumstances in which the MS4 discharges through a privately owned outfall, not owned or operated by the city.
- 3. TMDL requirements from the general permit should be removed.
- 4. References to quantitative monitoring should be removed from the permit.
- 5. In various areas of the general permit specific prescriptive language should be removed suggesting that general language be substituted allowing more flexibility for the local government. Such as using already existing programs or alternative solutions.

Example comments suggest removal of:

- outreach to minority and disadvantaged communities provisions in Part II.B.2(a);
- distribution of public education materials at high traffic businesses
- requirement in II.C.2(b) to organize and implement a volunteer involvement
- citizens advisory panel in Part II.C.2(c).
- 6. The requirement of "two dwelling units per acre" for low-density development is beyond the authority of NCDENR and EMC and must be removed.
- 7. DENR has never explained how the local government or the state would enforce requirements.
- 8. There is an apparent contradiction between Part V.A(c) \$25,000 daily civil penalty and Part II.E. that allows reliance on the DLR program for construction site runoff control. The DLR program limits the daily penalty to no more than \$5,000 per day.
- 9. Overall there is a lack of clarity and excessive ambiguity.
- 10. Some cities have noted that the annual reporting requirement duplicates reporting requirements under other stormwater programs and that the reporting should be combined.

Coverage under the Tar/Pam rules says to submit report in October. General permit says send report in December. It is requested that report formats be the same and a consistent date be used for efficiency reasons.

11. It is not within the community's authority to go into the school system with curriculum materials, and so the permit requirement to provide stormwater educational opportunities for school children is a problem.

Compendium list of comments from State Agencies, Division of Marine Fisheries, Shellfish Sanitation and Recreational Water Quality Section

- 1. Comments and references to technical articles submitted by the NC Marine Fisheries, and the NC Shellfish Protection Section, from scientists present a compelling argument that development greater than 10-12% built upon will degrade water quality and will not be protective of designated uses without engineering controls or effective BMP's. The threshold at which impervious surface impacts water quality is noted consistently throughout scientific literature to be approximately 10-12% beyond this water quality is degraded. Comments recommend changing the 24% built-upon criterion in the coastal general permit.
- 2. There should be incentives for low impact development. Storm water runoff is the single largest threat to bacterial water quality along the coast. A general permit should require measures likely to maintain the high quality of waters required for shellfishing and swimming.
- 3. The Coastal Habitat Protection Plan, explicitly indicates concerns for excessive impervious surface from built-upon and rural transportation.

4. Comments support a state stormwater program that effectively manages stormwater pollution, promotes clean water and harvestable shellfish. The general permit, as proposed by the Division of Water Quality, will not protect water quality and areas for shellfish harvest.

Additional Key Issues observed by the Hearing Officers

- 1. EPA's Phase II stormwater rules became effective in February 2000. These rules established the broad requirements for a Phase II permitting program.
- 2. Generally, a community is covered by the Phase II permitting program if it has a population between 1000 and 100,000 and it owns or operates a municipal separate storm sewer system (**MS4**) within an urbanized area. An MS4 can be drop-inlets and storm sewer pipes, but it can also be neighborhood street drainage ditches and culverts.
- 3. Communities may also be brought in under the program by being designated based on petition or receiving water impairment.
- 4. General NPDES Permits, often used for efficiency reasons, are not subject to modifications once issued. General Permits also have a reduced fee. Communities may opt for a tailored, individual Phase II stormwater discharge permit.
- 5. Provisions of the General Permits. Require cities to implement a program to control stormwater pollution via a **Stormwater Management Plan** (SMP) that implements **six minimum measures**. The six minimum measures are: 1) Public education, 2) Public involvement, 3) Illicit discharge control, 4) Construction site requirements, 5) Post-construction requirements, 6) Municipal good housekeeping. An **annual report** on progress, and revisions to the SMP is required.
- 6. DWQ has conducted over 45 public hearings, workshops, and public stakeholder meetings to gather comments on implementation of the Phase II program. Despite this effort, many issues remain highly controversial.
- 7. DWQ developed two separate but similar draft General Permits for formal hearing review. One general permit was developed for the 20 coastal counties and one for the other 80 counties of the state. The coastal version includes shellfish waters, and the other version includes trout waters. (These permits are also similar to many drafted individual permits that were not a subject for this hearing record)
- 8. North Carolina Session Law (SL 2004-163, Senate Bill 1210) is an act to provide for the temporary implementation of Federal Phase II Stormwater management requirements. The Act:
 - Directed the EMC to develop and issue a general permit for stormwater management but can not impose any requirement that exceeds the standards set out in Section 10 of the EMC temporary rule adopted 10 October 2002 and as amended by

- SL 2004-163. There was no apparent time line for development of the General Permit.
- Low-density post-construction requirements apply if there are no more than 2 dwelling units per acre or 24% built-upon area. (cannot be changed for General Permit)
- Stormwater from low density shall be transported by vegetated conveyances to the maximum extent practicable (MEP)
- Low density built upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans.
- A local government may opt to be covered under a General Stormwater Permit
- In any circumstance where any stormwater control requirement under a Phase II (NPDES) permit for stormwater management conflicts or overlaps with any stormwater control requirement under any other water quality program, the most stringent requirement shall apply. (DENR Secretary resolves any dispute).
- Division, in consultation with Division of Land Resources, Division of Soil and Water Conservation, and NCSU, shall develop or revise a design manual to assist in determining which controls are best suited. The design manual to be completed by 1 July 2005.
- 9. The permits indicate where an existing state stormwater program is in place; this program is deemed to comply with the post-construction stormwater practices. For areas where an existing state stormwater program does not exist the permittee must implement the Phase II stormwater requirements. This language does not appear to comply with SL 2004-163. In any circumstance where any stormwater control requirement under a Phase II (NPDES) permit for stormwater management conflicts or overlaps with any stormwater control requirement under any other water quality program, the most stringent requirement shall apply. SL 2004-163 further states that the DENR Secretary will resolve any dispute. (Existing state stormwater programs are for WS-I – WS-IV waters, HQW and ORW management strategies, Neuse River Basin Nutrient Sensitive Waters Management Strategy, Tar-Pamlico River Basin Nutrient Sensitive Waters Management Strategy, Randleman Lake Water Supply Watershed program, and the state Stormwater Management Policy established in 15A NCAC 2H .1000. There are different customized requirements within these varying programs. Which requirements are the most stringent may depend upon the nature of the receiving waters and the original specific reason these existing stormwater programs were developed.
- 10. North Carolina's administration of the Clean Water Act's NPDES program was historically developed with the intent of permitting treated wastewater. In this light, most of the rules and regulations that have been developed over time were not designed to effectively and equitably deal with untreated stormwater discharges.

Public comments of particular significance to Hearing Officers

All comments offered in either oral presentation or in writing assisted the hearing officers in developing a broad perspective of the issues. Several comments however, prompted notable observations from the hearing officers.

Comment From: Durham, Raleigh, Greensboro, NC League of Municipalities

This group objected to the language that infers that the general permit does not allow discharges that violate water quality standards. A primary reason there are objections is that each regulated MS4 has little control over the quality of the discharge. Commenters are concerned that this language sets an unattainable goal for them to achieve and opens the door for 3rd party litigation.

Hearing Officers Observations: The characteristics of storm water discharge quality are dependent on the land uses in the watershed. A common denominator that increases the negative impact on stormwater quality is the anthropogenic change within the watershed. These general permits are targeted for the more densely populated and growing areas of the state. Therefore it is without debate that the stormwater discharges will routinely cause water quality violations. Also CWA Section 402 (p) indicates a unique performance standard "reduce the discharge of pollutants to the maximum extent practicable" applicable to municipal storm water permits. The hearing officers could not determine any reason to indicate that the EPA expects the states to regulate storm water discharges in a similar fashion to other NPDES treated discharges. The Director should carefully consider the appropriateness of removing this language from the General Permits.

Comments From Environmental Organizations, Scientist, concerned Citizens and others A common set of concerns from this group is that stormwater is the number one threat to NC water quality, the proposed General Permits in there current form will not protect water quality and may even be detrimental, existing stormwater protection programs are not working in many areas (ex. Closed shellfish harvest area continues to increase).

Hearing Officers Observations: The record provided during the open comment period creates a compelling argument that these concerns are valid and supported by evidence from the scientific community, regulatory agencies and others. Built-upon area, impervious surface area, amount of undisturbed forested area, turf grass area, buffer widths around streams, and land use are all variables in the stormwater equation that must be balanced with sustainable growth. Many miles of streams and acres of shellfish harvest areas are use impaired in this state. These conditions developed over generations as our state has grown. The challenge for all citizens is to reverse the degradation trend. Other waters, which are currently in good condition, are sensitive for other reasons such as habitat for trout or threatened and endangered species and need to be protected. Stormwater management programs have the potential to make great strides toward meeting the challenge. Where these impaired waters exist, the Hearing Officers recognize that a comprehensive stormwater management strategy will be necessary to halt and possibly reverse the degradation trend and protect other sensitive waters. To create a best-fit program for these areas, the Director should consider the merits of an

Individual Stormwater Permit in lieu of the General Permit. These areas will each have differing site conditions, different resources requiring protection, and customized approaches and needs that the General Permit is less equipped to handle.

Comments From Southern Environmental Law Center and others

Among the issues this group was concerned about was that the General Permit applications were not available for public review and comment and that the General Permits erroneously deem other current stormwater programs as meeting Phase II requirements, which in their opinion, it does not.

Hearing Officers Observations: The Hearing Officers recognize the benefits of an informed public in striving for improved stormwater management. Providing an avenue for public comment on Municipal permit applications should be considered by the Director.

The Hearing Officers carefully reviewed the issue of existing stormwater programs being compliant with the General permit. While the Hearing Officers did not participate in legislative discussions concerning SL 2004-163, the law clearly indicates that:

In any circumstance where any stormwater control requirement under a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management conflicts or overlaps with any stormwater control requirement under any other water quality program, the most stringent requirement shall apply.

Because there are many different stormwater control requirements for different areas of the state the Hearing Officers believe that the Director should consider changing or adding clarification language to this portion of the General Permit consistent with SL 2004-163. Because the DENR Secretary or the Secretary's designee shall resolve any dispute as to whether there is a conflict or overlap between or among stormwater management requirements the Director should consider obtaining written guidance and legal review pertinent to this issue.

Options and evaluations for consideration

1. Do not issue the general permits.

Section 4 of SL 2004-163 requires the Commission to develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management.

2. Issue both General Permits as presented to the public hearing process.

The public hearing process has generated a great deal of negative comments from nearly all interested parties. Concerned individuals and groups consider the permits as ineffective for improving stormwater management. Local governments and other parties consider them to be overly prescriptive and establish unmanageable liability. While this may be considered as a balance between conflicting interests, the hearing officers believe that the permits as drafted will not provide sufficient protection to prevent serious degradation North Carolina's sensitive surface waters.

3. Issue general permits but require engineered stormwater control devices for all development with a built upon area greater than 12%.

Comments and information from the hearing process make a compelling case for degradation of water quality standards and biological integrity when built upon area exceeds 10 to 15 percent. The hearing officers, in reviewing these comments and materials believe that a built upon area of 24 percent with out BMP's or engineering controls will lead to lasting and serious impediments to achieving the goals of the CWA, especially for sensitive waters. However, Section 4 of Session Law (2004-63) limits freedom of the general permit to impose any requirements for post construction stormwater management that exceeds the standards set out in the Stormwater Management Rule. Difficulties of interpretation arise within the Session Law 2004-163. Notice that 10(e) indicates that the program shall equal or exceed protection provided by the model practices.

The low density definition of the Stormwater Management Rule (10)(e) reads as follows:

- (e) A post construction stormwater management program shall be developed and implemented that manages stormwater and protects water quality. The program shall equal or exceed the stormwater management and water quality protection provided by the following model practices:
 - (i) The program shall require all projects as defined in Sub-Item (10)(b) of this Rule to apply for locally issued permit coverage under one of the following stormwater management options:
 - (A) Low Density Projects. Projects shall be permitted as low density if the project meets the following:
 - (I) No more than 2 dwelling units per acre or 24 percent built-upon area BUA for all residential and non-residential development;

Session Law 2004-163 also requires measures in 40 CFR §122.34(b)(5) 40CFR 122.34(b)(5) 1 July 2003)

- (5) Post-construction storm water management in new development and redevelopment.
- (i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.
- (ii) You must:
- (A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;
- (B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and
- (C) Ensure adequate long-term operation and maintenance of BMPs.
- (iii) Guidance: not included here

The interpretation difficulties could be assisted with legal review or by returning to the General Assembly requesting clarifying language on session law 2004-163. General permits that are issued for sensitive waters with a low density definition of 24% built upon area will likely lead to lasting and serious impediments to achieving the goals of the CWA, especially for coastal and sensitive waters. Concerns and consistencies with the Coastal Habitat Protection Plan could also benefit from additional review. For your reference, Pigeon House Branch is 32% impervious (from hearing record).

4. Issue general permits without water quality standards compliance and focus language on MEP.

Congress, in revising the CWA, Sec. 402. National Pollution Discharge Elimination System, established requirements for stormwater permits as presented below:

[Sec. 402(p) added by PL 100-4]

- (p) Municipal and Industrial Stormwater Discharges.
- (3) Permit Requirements. --
- (A) Industrial Discharges. -- Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301.
- (B) Municipal Discharge. -- Permits for discharges from municipal storm sewers --
- (i) may be issued on a system -- or jurisdiction-wide basis,
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

Also see: United States Code TITLE 33 - NAVIGATION AND NAVIGABLE WATERS, CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL § 1342.

Notice that Industrial Stormwater Permits must meet Section 301 CWA requirements (Standards and enforcement - Effluent Limitations). But there is no clear direction (or limitation) that municipal stormwater discharges must meet water quality standards. The hearing officers believe that the CWA leaves this discretion up to the states. Because an issued general permit must be reviewed and accepted by EPA, the hearing officers believe that there is an ample opportunity for Federal review and consistency evaluation with the requirements of the CWA. Clearly, the NPDES program was originally developed for the proper management of point source treated wastewater. New technologies and management practices that are not yet fully understood will be required to cost effectively reduce stormwater impacts. It is expected that compliance with all water quality standards will be impossible for discharges from municipal storm systems. If the general permit is to be issued without the intention of applying numerical water quality standards, the permit should explicitly state why this requirement will not apply in this permit cycle.

Notice excerpts of NC GS 143 215.1 indicate that:

- (a) Activities for Which Permits Required. No person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:
- (4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.
- (5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.
- (6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.

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5. Issue a general permit for all areas except for waters SA, SB, and SC.

Session Law appears to prohibit the general permit from requiring engineering solutions for low density, less than 24%. Stormwater from developments with a density of 24% without engineering controls can reasonably be expected to degrade the suitability of coastal waters for swimming and shellfish harvest. Current stormwater requirements and associated enforcement activities are not preventing closures of shellfish harvesting areas according to comments from Marine Fisheries and Shellfish Sanitation. Concerns for excessive amounts of bacterial indicator organisms (from multiple sources including pet waste) are central to this issue. Development with a built upon area of 24% in freshwaters adjacent to SA, SB and SC waters may also be of concern. This option could incorporate the notion that a general permit for all coastal counties is inappropriate. For your further consideration of this option, the hearing officers requested a list of the Phase II communities in the 20 coastal counties, and their current status:

<u>Municipality</u>	Qualified	Individual Permit Application at DWQ	
Wilmington	1990 census	YES	
Wrightsville Beach	1990 census	YES	
Leland	1990 census	YES	
Carolina Beach	2000 census	YES	
Kure Beach	2000 census	YES	
Belville	1990 census	NO	(Belville certified do not own or operate an MS4)
Navassa	2000 census	NO	(Delinquent)
Jacksonville	1990 census	YES	

6. Issue a single general permit for coverage that excludes the following waters: Classes WS I, WSII, B, SA, SB, SC, and waters with a supplemental classification of TR, NSW, HQW, ORW, impaired waters designated on the state's EPA approved 303(d) list, and waters with listed threatened and endangered species.

These waters may likely require stormwater management measures beyond the levels currently available within a general permit. Because general permits cannot be readily adapted or changed to effectively customize programs to the demanding water quality needs of these classifications the use of an individual permit may be advantageous. Individual permits can be customized to suit the needs of adaptive management measures, individual problem identification, parameters of concern, and responses to the knowledge gained from monitoring, TMDL, or other reporting activities. Customized and effective individual permits in these waters may require monitoring and will likely require additional staff resources.

7. Consider a more comprehensive review of rules and regulations prior to permit issuance.

Comments, across interested groups, have raised valid concerns for how decisions will be reached on evaluating compliance and the potential administration of penalty assessments. The central theme of these comments is that the permits are too ambiguous to provide a clear understanding of when a permitted authority is either in compliance or out of compliance with permit conditions. A potential solution to the ambiguity is the development of an implementation and enforcement guidance manual or perhaps legal memorandums of agreement (MOA) with each permitted authority. Additional implementation, compliance, and enforcement guidance documents would be beneficial prior to potentially adversarial enforcement actions against a general permitted MS4. The Session Law does not appear to have established a time line for issuance of the general permit and neither hearing officer is trained in environmental law.

We have briefly consulted with one of the Department's able attorneys but there are numerous rules and regulations that did not foresee stormwater discharge to surface waters as an NPDES permitted activity (see GS 143 215.1).

A few examples incorporated within 15A NCAC 02B .0201 ANTIDEGRADATION POLICY (a) and (c) may be pertinent for your evaluation.

- (a) It is the policy of the Environmental Management Commission to maintain, protect, and enhance water quality within the State of North Carolina. Pursuant to this policy, the requirements of 40 CFR 131.12 are hereby incorporated by reference including any subsequent amendments and editions.
 - (1) Each applicant for an NPDES permit or NPDES permit expansion to discharge treated waste shall document an effort to consider non-discharge alternatives pursuant to 15A NCAC 2H.0105(c)(2).
 - (2) Public Notices for NPDES permits shall list parameters that would be water quality limited and state whether or not the discharge shall use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for dischargers downstream.
 - (3) The Division may require supplemental documentation from the affected local government that a proposed project or parts of the project are necessary for important economic and social development.
 - (4) not included here for sake of brevity
- (b) not included here for sake of brevity
- (c) The Commission shall consider the present and anticipated usage of waters with quality higher than the standards, including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and shall not allow degradation of the quality of waters with quality higher than the standards below the water quality necessary to maintain existing and anticipated uses of those waters. Waters with quality higher than the standards are defined by Rule .0202 of this Section.
- (d) not included here for sake of brevity
- (e) not included here for sake of brevity
- (f) not included here for sake of brevity

Similarly Federal policy that is incorporated by reference.

§ 131.12 Antidegradation policy.

- (a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:
- (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- (2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.
- (3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.
- (4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent

NOTICE OF PUBLIC HEARING AND DRAFT GENERAL PERMITS BY THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

SUBJECT: The Division of Water Quality has prepared two draft stormwater NPDES general permits for two State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater associated with the following activities:

The point source discharge of stormwater from small municipal separate storm sewer systems discharging to the waters of North Carolina.

PURPOSE: On the basis of preliminary staff review and application of Article 21 of Chapter 143, General Statutes of North Carolina, and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue two State NPDES General Permits subject to specific conditions. The Director of the Division of Water Quality, pursuant to NCGS 143-215.1(c) (3) and Regulation 15 NCAC 2H, Section .0100, has determined that it is in the public interest that a public hearing be held to receive all pertinent public comment on whether to issue the general permits as drafted, issue modified versions of the draft general permits, or to not issue the general permits.

HEARING

PROCEDURE: The hearing will be conducted in the following manner:

- 1. The staff of the Division of Water Quality will present an explanation of the NC Environmental Management Commission's general permit procedure and components of the draft general permits proposed for issuance.
- 2. Public Comment Comments, statements, data, and other information may be submitted in writing prior to or during the hearing, or may be presented orally at the hearing. Persons desiring to speak will indicate this intent at the time of registration at the hearing. So that all persons desiring to speak may do so, lengthy statements may be limited at the discretion of the Hearing Officer. Lengthy oral presentations must be accompanied by three (3) written copies which will be filed with the Hearing Clerk at the time of registration.
- 3. Cross examination of persons speaking will not be allowed; however, the Hearing Officer may ask questions for clarification.
- 4. The public hearing record will remain open for two weeks after the conclusion of the public hearing. Written comments regarding the draft permits may be submitted to the Division of Water Quality at the address shown below. All comments received by the Division whether in writing prior to the hearing, or presented at the hearing, or presented in writing within the two week open record period, will be taken into consideration by the Hearing Officer in his recommendations to the Director of the Division of Water Quality prior to the Director making a final decision on the matter of permit issuance.

WHEN/WHERE: December 2, 2004, 7:00 p.m. – 9:00 p.m.

Administrative Building Auditorium, Catawba Valley Community College, Hickory, NC

December 9, 2004, 6:00 p.m. – 8:30 p.m. Wayne County Public Library, Goldsboro, NC

December 14, 2004, 7:00 p.m. – 9:30 p.m. Northeast Regional Library, Wilmington, NC

December 16, 2004, 6:30 p.m. – 8:30 p.m. May Memorial Library, Burlington, NC

COPIES: Copies of the draft general permits and supporting fact sheets are available by contacting:

Mr. Ken Pickle NC Division of Water Quality 1617 Mail Service Center Raleigh, North Carolina 27699-1617

Telephone number: (919) 733-5083, extension 584 Ken.pickle@ncmail.net

All comments and requests should reference draft general permits numbers NCG230000 and NCG240000.

Date:	(signed)	
	for	Alan W. Klimek, Director
		Division of Water Quality